



Paper No. 18

Flehr Hohbach Test
Albritton & Herbert LLP
Four Embarcadero Center Suite 3400
San Francisco CA 94111-4187

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OFFICE OF PETITIONS

In re Application of
Spencer R. Malecha et al.
Application No. 09/494,149
Filed: January 28, 2000
Attorney Docket No. A-67641-1/RFT/DSS

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b)¹, filed January 14, 2002 (certificate of mail date, October 31, 2001), to revive the above-identified application.

The petition is **GRANTED**.

The instant application became abandoned on September 12, 2001, for failure to submit a timely response to the final Office action mailed on April 11, 2001, which set a three (3) month shortened statutory period for reply. Pursuant to petitioner's request under 37 CFR 1.136(a), the deadline for filing a reply was extended two months till September 12, 2001. However, the response filed September 19, 2001 (certificate of mail date, September 12, 2001) did not place the application in condition for allowance. Accordingly, a Notice of Abandonment was mailed December 4, 2001.

Petitioner has submitted a Request for Continued Examination (RCE) with the present petition and a Notice of Appeal.

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

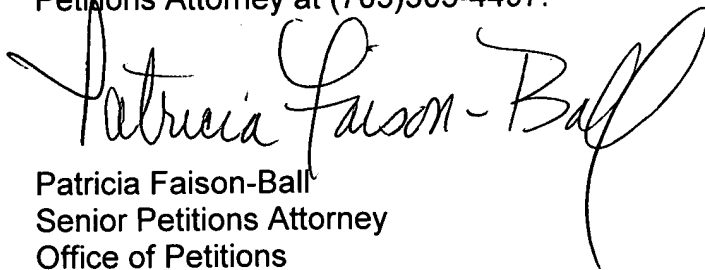
(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

The Notice of Appeal filed October 31, 2001 (certificate of mail date) has been entered and made of record. Accordingly, the two (2)-month period for filing the Appeal Brief, in triplicate, accompanied by the fee required by law, runs from the date of this decision.

The application is being forwarded to Technology Center 1600 for processing of the RCE and Notice of Appeal.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (703)305-4497.

A handwritten signature in black ink, reading "Patricia Faison-Ball". The signature is fluid and cursive, with a large, stylized "P" and "B".

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy